

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA**

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>HOWARD DAVID DERBY,<br><br>Defendant. | No. 2:19-cr-01035-CJW-MAR-1<br><br><b>MOTION FOR DOWNWARD<br/>DEPARTURE AND/OR VARIANCE</b> |
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The Defendant, by and through his undersigned counsel, moves the Court to depart or vary downward because the offense level determined by the United States Probation Office substantially overstates the seriousness of the offense; and based on offense characteristics and mitigating circumstances, pursuant to USSG §5K2.0 and/or 18 USC § 3553(a):

1. Sentencing in this matter has been set for July 6, 2020. Pursuant to the Court's Order of January 28, 2020, the Defendant hereby files his Motion for the Court to depart or vary downward from the guideline calculation set forth in the PSIR.

2. USPO established a Total Offense Level **20**; Criminal History Category **I** resulting in a guideline imprisonment range of **33 to 41 months**.

3. Defendant hereby requests that the Court grant a downward departure or variance due to a combination of factors, which are set forth below. These

factors along with supporting exhibits and applicable law are more thoroughly discussed in Defendant's Sentencing Memorandum also filed on today's date.

4. H. David Derby, should receive a downward departure for the overstated seriousness of offense under USSG §2B1.1 (note 21(C)); and for the combination of two or more offender characteristics or other circumstances, pursuant to USSG §5K2.0(a)(2)(B).

5. Should the Court determine that these factors do not justify downward departure; defendant maintains that he should still receive a downward variance under 18 USC § 3553 (a), taking into consideration all identified offender characteristics and circumstances of the case at bar.

6. Defendant requests a reduction in the Total Offense Level by at least 9 through reduction or elimination of specified enhancements or by downward departure and/or variance. Bringing the Total Offense Level to no more than 11; Criminal History I, resulting in an advisory guideline imprisonment range of no more than 8 to 14 months within Zone B.

7. A separate memorandum in support of this Motion is being filed on this date; so that the Court is fully briefed on the applicable law in the context of the Sentencing Guidelines and the range of options available to the Court.

WHEREFORE, Defendant prays this Court to grant a downward departure or variance based on a combination of all the factors and circumstances set forth above.

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all of the parties, or upon pro se parties, to the above-entitled cause by:

☐ U.S. Mail Fax ☐ Hand Delivered ☐ Overnight Courier X CM-ECF

/s/ Adrian Haughton (Date) 6/29/2020

Respectfully submitted,  
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